

Remarks/Arguments:

Claims 12-19 are pending in the present application. Claim 14 has been amended to correct a typographical error. Review and reconsideration on the merits are respectfully requested in view of the following comments.

Claims 12-14 and 18 stand rejected as being unpatentable over Schmaus et al. (U.S. Patent No. 7,582,681). Applicants respectfully submit that the '681 patent is not a proper prior art reference, and, therefore, the rejection cannot stand. The Office appears to be relying on the foreign priority date of the '681 patent of February 19, 2002 to establish the prior art status of the '681 patent. However, MPEP §2136.03 clearly states that a "reference's foreign priority date under 35 U.S.C. 119(a) – (d) and (f) cannot be used as the 35 U.S.C. 102(e) reference date" since 35 U.S.C. §102(e) requires that the reference be "filed in the United States before the invention thereof by the applicant." Therefore, the foreign filing date of the reference cannot be used to establish the '681 patent as prior art against the present application.

Furthermore, the '681 patent is not available as a prior art reference under any 35 U.S.C. §102(e) date. Attached hereto as Exhibit A is a flow chart for determining 35 U.S.C. §102(e) dates. In working through the flow chart, the document is a U.S. patent of an international application that was filed on or after November 29, 2000. However, the WIPO publication of the international application was in German and not in English, which leads to the conclusion that the U.S. patent has no §102(e) date and the patent only qualifies as prior art as of its publication or grant date under §102(a) or (b). The prior publication date of the U.S. application was October 6, 2005, which is after the April 8, 2004 filing date of the present application. Note applicants are not addressing the PCT publication which has not been cited on the record against the pending application. Therefore, the '681 patent is not a proper prior art reference, and, therefore, the rejection under 35 U.S.C. §103(a) must fail. Therefore, applicants respectfully request that the rejection be withdrawn.

In view of the foregoing, it is respectfully submitted that all of the pending claims are in condition for allowance and favorable action on the merits is requested. In the event that the

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AMENDMENT

Examiner wishes to discuss any aspect of this response, please contact William J. Davis at (973) 628-3529 or the undersigned at the telephone number indicated below. We hereby authorize the Commissioner under 37 C.F.R. § 1.136(a)(3) to treat any paper that is filed in this application which requires an extension of time as incorporating a request for such an extension. The Commissioner is authorized to charge any additional fees required or to credit any overpayment to Deposit Account No. 20-0809.

Respectfully submitted:

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By: /John F. Kane/
John F. Kane
Reg. No. 44,815

THOMPSON HINE LLP
2000 Courthouse Plaza N.E.
10 West Second Street
Dayton, Ohio 45402-1758
Telephone: (937) 443-6816
Facsimile: (937) 443-6635

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